IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.94 OF 2007
Against
The Order dated 24th November, 2006
IN
TESTAMENTARY SUIT NO.17 OF 1996
IN
TESTAMENTARY PETITION NO.132 OF 1996

Smita Ambalal Patel .... Appellant
Vs.
Ila Vipin Pandya .... Respondent

Ms Smita Ambalal Patel, the Appellant, in-person.

Sarvasri S.H. Doctor with J.P. Sen and I.D. Cruz i/b M/s. Mehta Girdharlal & Co. for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: FEBRUARY 12, 2007

P.C:

Heard. Undisputedly, pursuant to the order dated 6-10-2006 passed in Testamentary Petition No.132 of 1996, the oral evidence in examination-in-chief of the witness Himatlal Maganlal Trivedi has already been completed. Being so, we would not like to interfere in the impugned order at this stage, while leaving it open to the parties to argue about the credibility of such evidence at the time of the final hearing. We dispose of this appeal with the observation that in relation to recording of evidence, the Courts are expected to adhere

strictly to the provisions of Order 18 of the C.P.C. and once the parties have chosen to place evidence in the form of affidavits in terms of Order 18, Rule 4 of the C.P.C., they cannot thereafter insist for oral testimony of the same witnesses unless the party is able to satisfy the Court with necessary justification for the course to be adopted and which shall be permissible only on justifiable grounds and in exceptional cases, and not as a matter of course. Needless to say that in the case of remaining witnesses, since they have already filed affidavits in terms of Order 18, Rule 4 of the C.P.C., if the respondent desires to lead any further evidence of all or any of those witnesses, it will have to be by adhering to the provisions of law and the observations made herein. With these observations, the appeal is disposed of.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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